

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

RODNEY HUBBARD,

Plaintiff,

v.

ANDREW HOLMES,

Defendant.

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Case No.: 3:16-cv-16

**PLAINTIFF RODNEY HUBBARD'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW Plaintiff Rodney Hubbard, by counsel, and for his Proposed Findings of Fact and Conclusions of Law pertaining to the December 9 hearing on Defendant's Motion to Enforce Settlement states as follows:

PROPOSED FINDINGS OF FACT

1. Jeffrey Fogel, Esq. (former counsel for Plaintiff Rodney Hubbard) and counsel for Defendant reached an agreement to settle the above-styled matter.
2. Mr. Fogel was originally informed by another plaintiff in this matter, Malcolm Cook, that Plaintiff Rodney Hubbard had approved a certain dollar amount to settle the case.
3. Mr. Fogel did not personally speak with Plaintiff Rodney Hubbard prior to accepting a settlement agreement on behalf of Mr. Hubbard and the other plaintiffs.
4. Plaintiff Rodney Hubbard has maintained that he never agreed to the settlement apparently agreed upon by counsel.
5. Upon questioning under oath, Plaintiff Malcolm Cook testified that could not say one way or the other whether Plaintiff Rodney Hubbard ever agreed to the terms of the settlement as proposed.

6. Plaintiff Malcolm Cook's testimony under oath is in conflict with Mr. Cook's previous communication with Mr. Fogel regarding Plaintiff Rodney Hubbard's approval of the proposed settlement.

7. Upon questioning under oath, another plaintiff in this matter, Sergio Harris, testified that he personally knows Plaintiff Rodney Hubbard never agreed to the terms of the proposed settlement agreement.

8. Upon questioning under oath, another plaintiff in this matter, Leon Polk, testified that he personally knows Plaintiff Rodney Hubbard never agreed to the terms of the proposed settlement agreement.

9. Upon questioning under oath, Plaintiff Rodney Hubbard testified that he never agreed to the terms of the proposed settlement agreement.

10. Multiple plaintiffs testified under oath that Plaintiff Malcolm Cook was anxious to settle this matter for personal financial reasons.

11. Plaintiff Rodney Hubbard and Mr. Fogel did not have a written fee agreement.

12. Mr. Fogel was not given authority by Plaintiff Rodney Hubbard to settle this case on his behalf.

PROPOSED CONCLUSIONS OF LAW

1. An attorney of record may not compromise, settle or consent to a final disposition of his client's case without express authority. *Thomas v. Colorado Trust Deed Funds, Inc.*, 366 F.2d 136, 139 (10th Cir. 1966).

2. If a district court concludes that no settlement agreement was reached or that agreement was not reached on all the material terms, then it must deny enforcement. *Hensley v. Alcon Laboratories*, 277 F.3d 535 (4th Cir. 2001).

3. Since, in fact, Plaintiff Rodney Hubbard did not approve the settlement agreement at issue, nor did anything either to ratify it or to estop himself from denying his counsel's lack of authority, no valid settlement agreement was actually reached in this case and thus the proposed settlement agreement at issue in this matter will not be enforced. See *Moore v. Beaufort County, N.C.*, 936 F.2d 159, 162 (4th Cir. 1991). See also *St. Amand v. Marriott Hotel, Inc.*, 430 F. Supp. 488 (E.D. La. 1977).

Respectfully submitted,

RODNEY HUBBARD

By: /s/
 Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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